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13 **UNITED STATES DISTRICT COURT**
14 **SOUTHERN DISTRICT OF CALIFORNIA**
15

16 **THERMOLIFE INTERNATIONAL, LLC**

17 Plaintiff,

18 vs.

19 **GENTOPIA LABORATORIES,**

20 Defendant.
21
22

Case No. '13CV2154 MMANLS

**COMPLAINT FOR PATENT
INFRINGEMENT**

JURY TRIAL DEMANDED

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1 Plaintiff Thermolife International, LLC ("Plaintiff") hereby alleges for its
 2 Complaint against Gentopia Laboratories ("Defendant"), on personal knowledge as
 3 to its own activities and on information and belief as to the activities of others, as
 4 follows:

5 **I. THE PARTIES**

6 1. Plaintiff is a limited liability company organized and existing under
 7 the laws of Arizona, with a place of business at 1811 Ocean Front Walk in Venice,
 8 California, 90291.

9 2. Plaintiff is and was at all relevant times the exclusive licensee of
 10 United States Patent No. 6,646,006, titled "Enhancement of Vascular Function By
 11 Modulation of Endogenous Nitric Oxide Production or Activity," referred to herein
 12 as the "patent in suit."

13 3. The above patent is and was owned by The Board of Trustees of the
 14 Leland Stanford Junior University ("Stanford University") and Plaintiff exclusively
 15 licenses and licensed the patent from Stanford University.

16 4. Plaintiff has been given the right by Stanford University to institute
 17 suit with respect to infringements of the patent in suit, including this suit against
 18 Defendant.

19 5. Defendant is an entity organized and existing under the laws of New
 20 York with a principal place of business at 2005 Palmer Avenue, Suite 209 in
 21 Larchmont, New York, 10538.

22 **II. JURISDICTION AND VENUE**

23 6. This is an action for patent infringement arising under the patent laws
 24 of the United States, Title 35 of the United States Code. Accordingly, this Court has
 25 subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1338, and 1367.

26 7. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391 and
 27 1400.

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1 8. This Court has personal jurisdiction over Defendant. By way of
2 example and without limitation, Defendant, directly or through intermediaries
3 (including distributors, retailers, and others), makes, manufactures, ships,
4 distributes, advertises, markets, offers for sale, and/or sells dietary supplement
5 products that infringe on one or more claims of the patent in suit (hereinafter the
6 “accused products”), which include without limitation products sold under the
7 “Virectin” brand name, in the United States, the State of California, and the
8 Southern District of California.

9 9. By way of further example and without limitation, Defendant has
10 purposefully and voluntarily placed the accused products into the stream of
11 commerce with the expectation that they will be purchased in the Southern District
12 of California, and the products are actually purchased in the Southern District of
13 California.

14 **III. THE DEFENDANT’S INFRINGEMENTS**

15 10. Defendant has committed the tort of patent infringement within the
16 State of California, and more particularly, within the Southern District of
17 California, by virtue of the fact that Defendant has formulated, made,
18 manufactured, shipped, distributed, advertised, offered for sale, and/or sold the
19 accused products in this District, and continues to do so.

20 **A. DIRECT INFRINGEMENTS**

21 11. Defendant’s employees, agents, representatives and other persons
22 sponsored by or who endorse Defendant and Defendant’s products in advertising
23 and marketing activities, have taken, used, and orally administered the accused
24 products.

25 12. The accused products are formulated, made, manufactured, shipped,
26 distributed, advertised, offered for sale, and sold by Defendant to include certain
27 ingredients that, by virtue of their inclusion in the products, infringe one or more
28 claims of one or more of the patent in suit.

13. The accused products are formulated, made, manufactured, shipped, distributed, advertised, offered for sale, and sold by Defendant to include specific ingredients for certain purposes that, by virtue of their inclusion in the products for such purposes, infringe one or more claims of the patent in suit, and as a result, when Defendant's employees, agents, representatives and other persons sponsored by or who endorse Defendant and Defendant's products in advertising and marketing activities orally administer the accused products, they are practicing and they practiced the methods disclosed in those claims.

14. The purposes for which these ingredients are included in the accused products are and were, without limitation, to enhance nitric oxide production, to improve nitric oxide activity, to produce nitric oxide, to boost nitric oxide levels in the body, and to enhance physical performance.

15. Defendant encouraged and/or is aware of the fact that its employees, agents, representatives and other persons sponsored by Defendant or who endorse Defendant and Defendant's products in advertising and marketing activities orally administered and administer the accused products and practice and practiced the methods disclosed in one or more claims of the patent in suit, and these employees, agents, representatives and other persons sponsored by Defendant or who endorse Defendant and Defendant's products in advertising and marketing activities are and were acting under Defendant's direction and control when practicing those methods.

16. Therefore, Defendant is and was a direct infringer of one or more claims of the patent in suit, and Defendant practices and practiced the methods as set forth in one or more claims of the patent in suit.

B. INDIRECT INFRINGEMENTS

17. End-users of Defendant's accused products were and are also direct infringers of one or more claims of the patent in suit.

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1 18. End-users of Defendant's accused products have taken, used, and
2 orally administered the accused products.

3 19. The accused products are and were formulated, made, manufactured,
4 shipped, distributed, advertised, offered for sale, and/or sold by Defendant to
5 include certain ingredients that, by virtue of their inclusion in the products, infringe
6 and infringed one or more claims of the patent in suit.

7 20. The accused products are and were formulated, made, manufactured,
8 shipped, distributed, advertised, offered for sale, and/or sold by Defendant to
9 include specific ingredients for certain purposes that, because of their inclusion in
10 the products for such purposes, infringe and infringed one or more claims of the
11 patent in suit, and as a result, when end-users of Defendant's accused products
12 orally administer and administered the accused products, they are and were
13 practicing the methods disclosed in those claims.

14 21. Defendant's labels and advertising for the accused products explain
15 and explained the elements and essential elements of one or more of the methods
16 disclosed in the patent in suit, and those labels and advertising statements
17 encourage, urge, and induce the accused products' end-users, and did so in the past,
18 to purchase and orally ingest the products to practice those methods, and end-users
19 do and did practice those methods.

20 22. Defendant has therefore specifically intended to cause these end-users
21 to directly infringe the claimed methods of this patent, and in fact urged them to do
22 so.

23 23. The accused products are and were not suitable for non-infringing
24 uses, and none of Defendant's labels or advertisements for the accused products
25 disclose or disclosed any uses for the products, nor for the compounds disclosed in
26 the claimed methods of the patent in suit, that do not infringe upon such methods.

27 24. The inclusion of the specific infringing compounds in the products is
28 and was material to practicing such methods.

1 25. Defendant has and had knowledge that the accused products are and
2 were especially adapted by end-users of the products for the practicing of such
3 methods, and, indeed, Defendant encourages, urges, and induces the accused
4 products' end-users to purchase and orally administer the accused products to
5 practice such methods, and has done so in the past.

6 26. Defendant intentionally and knowingly induced, encouraged, and
7 urged end-users of the accused products to purchase and orally administer the
8 accused products for the purposes of practicing the claimed methods, by having
9 them orally ingest the compounds disclosed in such claims.

10 27. Defendant has and had knowledge of the fact that the accused
11 products, particularly as administered, infringe on one or more claims of the patent
12 in suit.

13 28. Defendant has and had direct, firsthand knowledge of the patent in
14 suit.

15 29. For example and without limitation, Plaintiff believes Defendant has
16 had knowledge of the patent in suit since November 2006, when an ongoing
17 settlement of a patent infringement case relating to the patent suit and other related
18 patents against Herbalife, a well-known company in Defendant's industry, was
19 announced in press releases issued in a highly publicized manner. Plaintiff believes
20 Defendant's employees, agents, and representatives saw the press releases and were
21 aware of the settlement and thus the patent in suit.

22 30. By way of further example and without limitation, Defendant sold its
23 products through retailers, including online retailers, and those retailers have sold
24 other companies' products whose labels and/or advertisements have been
25 prominently marked with the patent in suit and/or related patents, by patent number,
26 including without limitation, upon information and belief, the products
27 manufactured and sold by Herbalife, Daily Wellness, and Vitality Research Labs.
28 Defendant's employees, agents, and representatives have seen these labels and

1 advertisements and, thus, Defendant has and had direct knowledge of the patent in
2 suit.

3 31. By way of further example and without limitation, Defendant received
4 written notice of the patent in suit from Plaintiff in April 2013.

5 32. Defendant brazenly and willfully decided to infringe the patent in suit
6 despite knowledge of the patent's existence and its knowledge of the accused
7 products' infringements of the patent.

8 33. At a minimum, and in the alternative, Plaintiff pleads that Defendant
9 willfully blinded itself to the infringing nature of the accused products' sales.

10 34. Defendant did not cease its own direct infringement, nor its
11 contributory infringement or inducement of infringement by end-users, despite its
12 knowledge of the patent in suit and the end-users' infringing activities with respect
13 to the patent in suit.

14 **IV. FIRST CAUSE OF ACTION**

15 **Infringement of U.S. Patent No. 6,646,006**

16 35. Plaintiff repeats and re-alleges the allegations of the foregoing
17 paragraphs of this Complaint as if fully set forth herein.

18 36. Defendant has in the past literally and directly infringed or directly
19 infringed under the doctrine of equivalents one or more claims of United States
20 Patent No. 6,646,006 by making, using, selling, and offering for sale the accused
21 products, or any one of those products.

22 37. In addition to the fact that Defendant makes, uses, sells, and offers for
23 sale the accused products, and did so in the past, further examples of Defendant's
24 direct infringements include, without limitation, the fact that Defendant encouraged
25 and/or is aware of the fact that its employees, agents, representatives and other
26 persons sponsored by or who endorse Defendant and Defendant's products in
27 advertising and marketing activities orally administer the accused products and
28 practice the methods disclosed in one or more claims of United States Patent No.

1 6,646,006, and these employees, agents, representatives and other persons
2 sponsored by or who endorse Defendant and Defendant's products in advertising
3 and marketing activities acted under Defendant's direction and control when
4 practicing those methods.

5 38. Defendant encouraged and was aware of these persons' oral
6 administration of the accused products for these purposes, these persons are acting
7 under Defendant's direction and control, and therefore Defendant directly practiced
8 the methods disclosed in United States Patent No. 6,646,006.

9 39. End-users of Defendant's accused products were also direct infringers
10 of one or more claims of United States Patent No. 6,646,006.

11 40. End-users of Defendant's accused products have taken, used, and
12 orally administered the accused products.

13 41. The accused products were formulated, made, manufactured, shipped,
14 distributed, advertised, offered for sale, and sold by Defendant to include certain
15 ingredients that, by virtue of their inclusion in the products, infringed one or more
16 claims of United States Patent No. 6,646,006.

17 42. The accused products were formulated, made, manufactured, shipped,
18 distributed, advertised, offered for sale, and sold by Defendant to include specific
19 ingredients for purposes that, by their inclusion in the products for such purposes,
20 infringed one or more claims of United States Patent No. 6,646,006, and as a result,
21 when end-users of Defendant's accused products orally administered the accused
22 products, they were practicing the methods disclosed in one or more claims of that
23 patent.

24 43. Defendant's labels and advertising for the accused products explained
25 the elements and essential elements of the methods disclosed in United States
26 Patent No. 6,646,006, and those labels and advertising statements encouraged,
27 urged, and induced the accused products' end-users to purchase and orally ingest
28 the products to practice those methods, and end-users did practice those methods.

1 44. Defendant therefore specifically intended to cause these end-users to
2 directly infringe the claimed methods of United States Patent No. 6,646,006, and
3 had in fact urged them to do so.

4 45. The accused products were not suitable for non-infringing uses, and
5 none of Defendant's labels or advertisements for the accused products disclosed
6 any uses for the products, nor for the compounds disclosed in the claimed methods,
7 that did not infringe upon such methods.

8 46. The inclusion of these specific infringing compounds in the products
9 was material to practicing such methods.

10 47. Defendant had knowledge that the accused products were especially
11 adapted by end-users of the products for the practicing of such methods, and,
12 indeed, Defendant encouraged, urged, and induced the accused products' end-users
13 to purchase and orally administer the accused products to practice such methods.

14 48. Defendant intentionally and knowingly induced, encouraged, and
15 urged end-users of the accused products to purchase and orally administer the
16 accused products for the purposes disclosed in one or more claims of United States
17 Patent No. 6,646,006, by having them orally ingest the compounds disclosed in
18 such claims.

19 49. Defendant had knowledge of the fact that the accused products,
20 particularly as administered, infringed on one or more claims of United States
21 Patent No. 6,646,006.

22 50. Defendant also had direct, firsthand knowledge of United States Patent
23 No. 6,646,006 itself.

24 51. Defendant's activities were without express or implied license by
25 Plaintiff.

26 52. As a result of Defendant's acts of infringement, Plaintiff suffered and
27 will continue to suffer damages in an amount to be proved at trial.

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53. Defendant's past infringements and/or continuing infringements have been deliberate and willful, and this case is therefore an exceptional case, which warrants an award of treble damages and attorneys' fees in accordance with 35 U.S.C. § 285.

V. PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for entry of judgment against Defendant as follows:

1. A declaration that Defendant has infringed the patent in suit, under 35 U.S.C. §§ 271 *et seq.*;

2. That Defendant be required to provide to Plaintiff an accounting of all gains, profits, and advantages derived by Defendant's infringement of the patent in suit, and that Plaintiff be awarded damages adequate to compensate Plaintiff for the wrongful infringing acts by Defendant, in accordance with 35 U.S.C. § 284;

3. That the damages awarded to Plaintiff with regard to the patent in suit be increased up to three times, in view of Defendant's willful infringement, in accordance with 35 U.S.C. § 284;

4. That this case be declared to be exceptional in favor of Plaintiff under 35 U.S.C. § 285, and that Plaintiff be awarded its reasonable attorneys' fees and other expenses incurred in connection with this action;

5. That Plaintiff be awarded its interest and costs of suit incurred in this action;

6. Compensatory damages;

7. Punitive damages; and

8. That Plaintiff be awarded such other and further relief as this Court may deem just and proper.

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DEMAND FOR JURY TRIAL

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff hereby demands a jury trial for all issues in this case that properly are subject to a jury trial.

DATED: September 12, 2013

HIDEN, ROTT & OERTLE, LLP

By:



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